

CONSUMER TIPS ON RETAIL STORE BANKRUPTCIES

When a retail store
shuts its doors
and goes bankrupt,
consumers can be left
out in the cold.



These California
Department of Consumer
Affairs tips can help.

Learn about:

- \$ reducing risk of loss
- \$ canceling charges for undelivered merchandise
- \$ filing a claim to try and get your money back
- \$ redeeming a gift certificate

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Additional Resources:

California Department
of Consumer Affairs
1-800-952-5210
www.dca.ca.gov

U.S. Courts
Federal Judicial Library
"Bankruptcy Basics"
www.uscourts.gov/bankbasic.pdf

For more information, go to
www.uscourts.gov and select
"U.S. Bankruptcy Courts" or
search for "bankruptcy"

Take Steps to Avoid Losses From a Retail Store Bankruptcy

The following consumer strategies won't guarantee a store stays in business. But keep them in mind if you have concerns.

- The old sayings “buyer beware” and “an ounce of prevention is worth a pound of cure” are still true. If you plan to purchase a big-ticket item like a car, appliance or furniture, do your homework before you shop.
- Shop several reputable stores with good inventories and customer-service track records.
- Get references from friends, neighbors, relatives or co-workers.
- Check with your local Better Business Bureau by phone or online for any reports on the company.
- Search the World Wide Web for news on the company's financial health and business history.
- Check that the store has any required licenses.
- Look for a warranty on the product that's independent of the retail store. If the store goes out of business, the manufacturer's warranty may be all that's left to back the product. Inspect warranty documents, fine print and all. Also, consider the quality track record of the manufacturer.
- Keep all sales records, receipts and literature.
- Use a credit card and you'll be better protected if a store goes out of business. If you are billed for merchandise you haven't received, notify your credit card company in writing immediately. (See “Take ‘Charge’ of the Situation” inside for more credit card tips.)
- If your payment is a large deposit or payment toward a very expensive item like a car or boat, consider protecting your investment by using an escrow company (common with home purchases). You'll make your payment to the escrow service, a third party in the transaction who provides this service for a fee. The escrow agent assures the seller that your payment has been made, but waits until you have satisfactorily received the merchandise before passing the funds on to the seller.
- If you pay cash for all or part of a purchase and the store files for bankruptcy protection before you get your merchandise, you probably have become an “unsecured creditor” of the store. You may lose some or all of your payment. (See “Filing a Claim” inside for tips on how to try and get your money back.)

What Should You Do When a Retail Store Closes its Doors and Goes Bankrupt?

Is it Worth Filing a Claim?

- Bankruptcy law spells out who gets paid first from any available assets. Administrative costs for the bankruptcy case are first in line. Next are “secured creditors” whose claims are secured by the business’ property or other assets. Farther down in priority are “unsecured creditors.”
- As a consumer creditor who has paid for goods never received, you’re ordinarily an “unsecured creditor.” Among unsecured creditors, consumers are sixth in priority for claims of up to \$1,950. Higher in priority, for example, are store employees seeking unpaid wages.
- With secured creditors first in line for payment, the outlook for unsecured consumer creditors is not bright. If there are no assets in the bankruptcy estate for unsecured creditors, you will receive nothing. In most bankruptcies, unsecured creditors are not paid.
- Consumers should weigh the potential benefits of a successful or partially successful claim, against the inconvenience and expense of pursuing the claim.
- Even a successful claim will take time. Bankruptcies in which there are assets can take up to a year or more before creditors are paid.
- In many cases, there are no assets.
- Your prospects for receiving your money are better if a store chooses to file “Chapter 11” bankruptcy. This means the store intends to reorganize, emerge from bankruptcy and continue doing business. But many retail stores fail to achieve that goal. Most “Chapter 11” bankruptcies eventually end up in “Chapter 7” bankruptcy, which involves liquidation of assets and going out of business for good.
- For more information that can help you decide whether or not to file a claim, contact the bankruptcy trustee. (Trustee information is available from the clerk of the court.)

If Your Merchandise is Waiting in the Store ...

If you paid for merchandise in cash or with a cash equivalent (such as a check or debit card), but haven’t received what you ordered, find out if the merchandise is actually inside the store ready to be delivered. If the merchandise is specifically identified for delivery to you, you might have a priority right to it. If so, consult an expert in bankruptcy law immediately for advice on how to obtain possession of the property.

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How to File a Claim

- If a store files bankruptcy and you haven't received the merchandise you have paid for, you are a creditor of the store and ordinarily can file a claim with the bankruptcy court.
- Federal courts administer bankruptcies. The process involves the gathering of assets, such as property and money, and the payment of administrative costs and claims. A local store probably would file for bankruptcy in the U.S. Bankruptcy Court for your region. A chain or national store might file in the region where it is headquartered or incorporated. A list of courts nationwide and links to their Web sites can be found at www.uscourts.gov in the "U.S. Bankruptcy Courts" section.
- After a bankruptcy filing, the court appoints a bankruptcy trustee, creditors are notified, and the trustee oversees the process of tallying assets and handling claims.
- Don't wait too long to file a claim. Don't wait until the store or court contacts you to tell you you're a creditor, because consumer creditors aren't always notified.
- It's best to file your claim at the earliest opportunity after you've confirmed claims are being accepted.
- If you delay, you could miss the deadline for filing claims, commonly 90 days from the bankruptcy filing date. Contact the bankruptcy court for the specific deadline.
- Contact the clerk of the bankruptcy court or an office supply store to obtain a standard "proof of claim" form. You can also download the form from the "Official Bankruptcy Forms" section of the U.S. Courts Web site at www.uscourts.gov/bankform.

After you have the form:

- Contact the clerk of the bankruptcy court to get the identifying name and number of the bankruptcy case and check if it's OK to file a claim.
 - Gather copies of all receipts and records regarding the purchase so you can later attach them to the completed "proof of claim" form. Save the original receipts.
 - Make two copies of the signed form and attachments. One copy is for you and one copy will also be sent to the court.
 - Mail the original signed form with attachments to the court. Also include the copy of the form and attachments, along with a stamped, self-addressed envelope. Ask the clerk of the bankruptcy court to return the duplicate copy of your "proof of claim" form and attachments in the self-addressed envelope for your records.
- Since a business that has filed bankruptcy is protected from legal action by creditors, you can't legally take such action against the business.

Take 'Charge' of the Situation

- If you paid by credit card for merchandise but did not receive it, you should contact your credit card company in writing. You may not need to pay for the purchase.
- In a letter to the issuer of the card, provide details about the transaction. Include your account information. Insist on your right to withhold payment. And state the reason for the "billing error." For example: "The store went bankrupt and I did not receive the merchandise that I purchased."
- You must act promptly, and not later than 60 days after receiving the first bill showing the error. (For details on how to contest a charge, and your rights and responsibilities under the Fair Credit Billing Act, visit the Federal Trade Commission Web site at www.ftc.gov and review the "Consumer Protection," "Credit" information.)

Gift Certificates

- If you hold a gift certificate from a store that files for bankruptcy, the gift certificate may have no value. However, you may have a claim against the bankruptcy estate.
- Since stores filing "Chapter 11" bankruptcy intend to stay in business, they typically will ask the court for permission to honor gift certificates, in hopes of maintaining good customer relations.

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- If the court doesn't allow gift certificates to be honored, or if the store files bankruptcy under "Chapter 7," customers with gift certificates are creditors in the bankruptcy case.

- Gift certificate holders have relatively high priority among unsecured creditors in a "Chapter 7" case, and may receive some

percentage of the certificate's value, but only if the bankruptcy estate has enough assets to pay claims. (See "How to File a Claim" tips.)

- A recently adopted California law (Civil Code section 1749.6) is intended to help gift certificate holders. It requires a business in bankruptcy to honor gift certificates issued prior to the date it filed for bankruptcy. A gift certificate's value belongs to the consumer, not to the issuing business, according to the law.

Warranties

- If a retail store goes out of business, it probably won't be able to honor its own warranties and return policies. In that case, you probably will have to rely on a manufacturer's warranty to cover repair or service needs for the product.
- An extended service and repair contract backed by a third party is also not ordinarily affected by the closing of a retail store. For consumer tips on service contracts for many products, see the Department of Consumer Affairs' Bureau of Electronic and Appliance Repair Web site at www.bear.ca.gov.



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